

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS
Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

**IN THE MATTER OF:
T-MOBILE NORTHEAST, LLC
and
ERP OPERATING LIMITED PARTNERSHIP**

Petitioners

Michael McGarity

Hillorie Morrison

Curtis Jews

For the Petition

Gregory Rapisarda, Esquire

Attorney for Petitioners

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**Board of Appeals Case No. S-2809
(OZAH No. 11-33)**

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Before: Lynn A. Robeson, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

Petition No. S-2809 was filed on May 3, 2011, by T-Mobile Northeast LLC and ERP Operating Limited Partnership. Petitioners seek a special exception, pursuant to §59-G-2.58 of the Zoning Ordinance, to construct an unmanned wireless telecommunications facility and an associated equipment area at 14001 Grey Eagle Court, Germantown, Maryland 20874.

The Montgomery County Transmission Facility Coordinating Group (TFCG), also known as the “Tower Committee,” reviewed the original application on February 2, 2011, and recommended approval of the facility subject to two conditions. These conditions were (1) approval by the Board of Appeals of the special exception application and (2) provision for accommodating at least three carriers. Exhibit 7.

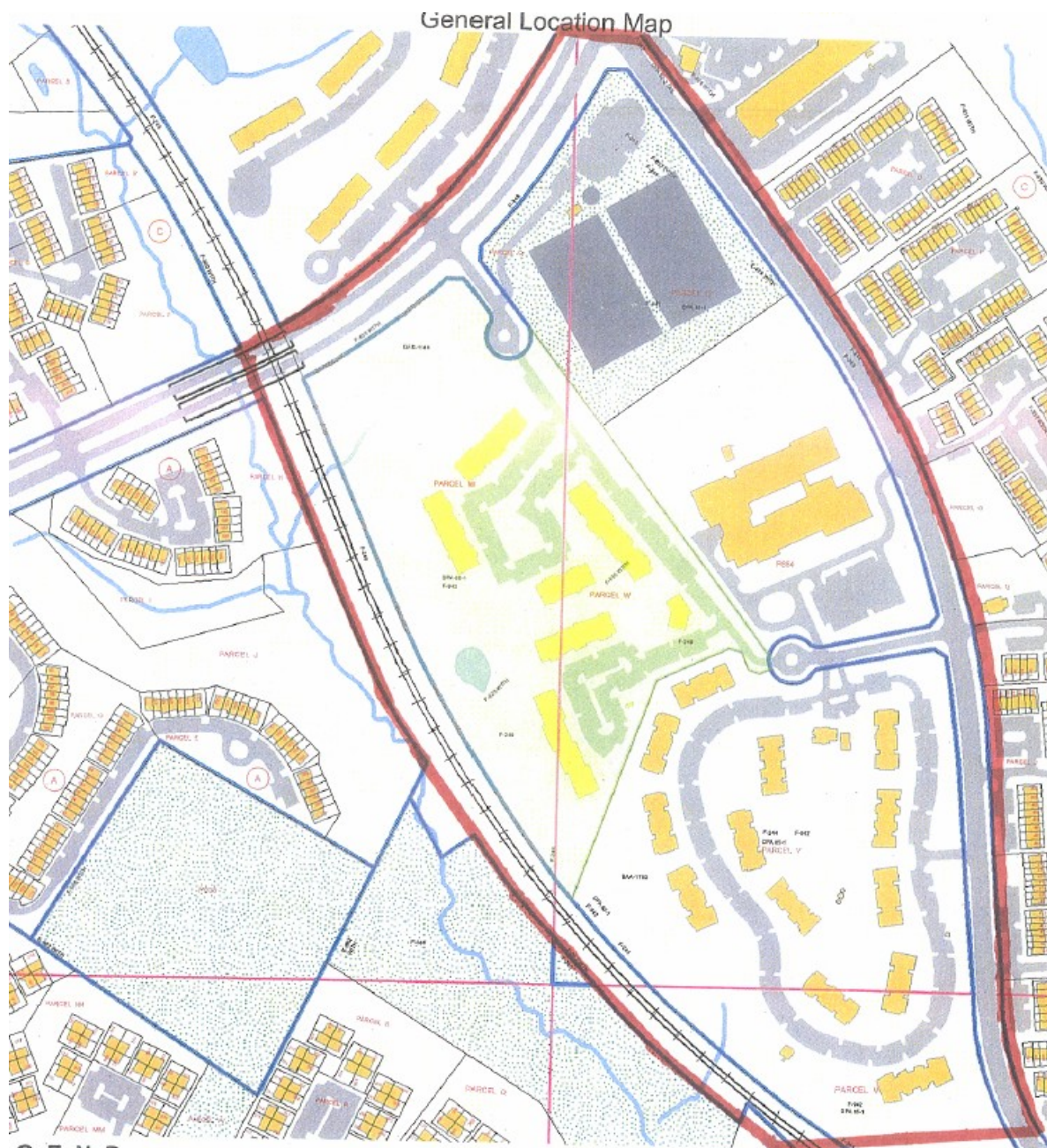
The Board of Appeals issued a Notice of Hearing announcing a hearing date of July 11, 2011. Exhibit 12(b). Technical Staff issued its report recommending approval, subject to conditions, on June 28, 2011. Exhibit 13(a).

The July 11, 2011 public hearing proceeded as scheduled. No one appeared in opposition to the facility. Because the application showed a compound of sufficient size for only one carrier, the Hearing Examiner requested the Applicant to revise the application to show a compound which could accommodate three carriers and extended the time for closing the record to August 1, 2011. **T. 77.** The Applicant did submit a revised site plan showing a compound of sufficient size to accommodate three carriers on August 5, 2011. The Hearing Examiner then re-opened the record for an **additional time** to issue a Notice of Motion to Amend and to provide an opportunity for parties to object to the amendment to the petition. Exhibit 33. The record closed on August 15, 2011. There were no objections to the amendment of the petition submitted into the record.

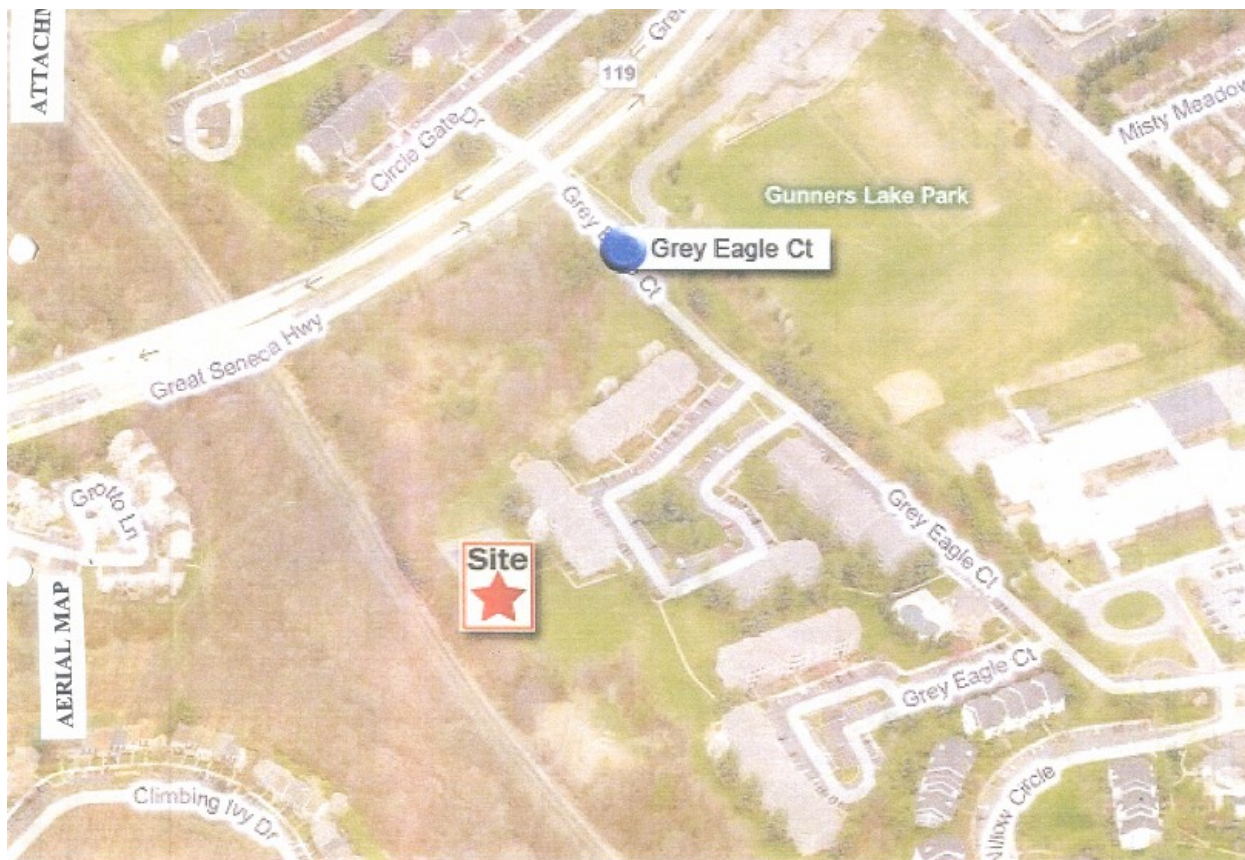
II. FACTUAL BACKGROUND

A. The Subject Property and the Surrounding Area

Located at 14001 Grey Eagle Court in Germantown, Maryland, the subject property consists of approximately 20 acres, zoned PD-9, identified as Parcel W, Gunner's Lake Village Subdivision. Exhibit 13(a). Technical Staff included a location map showing the proposed site in their Technical Staff Report (Exhibit 13(a), Attachment 1):



The property is improved with six multi-family apartment buildings, known as the “Northlake Apartments”. Exhibit 13(a), p. 3. The approved development plan for the subject property does not include this site; therefore, Technical Staff recommends imposing a condition on the special exception approval requiring the T-Mobile to obtain District Council approval of a Development Plan Amendment prior to the issuance of a building permit. Exhibit 13(a), p. 1. Access is via Grey Eagle Court which connects to Great Seneca Highway. Technical Staff advises that the property gently slopes downward from east to west and that location of the monopole and compound will be at the rear of the property, near adjoining railroad tracks, a wooded area, and tennis courts. An aerial photograph from the Technical Staff Report (Exhibit 13(a), Attachment 2) showing the property and the proposed location of the facility is shown below:



**Aerial View
(Exhibit 13(a), Attachment 2)**

Technical Staff defined the surrounding neighborhood as bounded by Seneca Highway to the north, Wisteria Drive to the southeast, and the CSX railroad to the west. Exhibit 13(a), p. 3. Having no evidence to the contrary, the Hearing Examiner accepts this definition of the neighborhood.

B. The Proposed Use

T-Mobile proposes a 95-foot tall, slim line design unipole (with antennas concealed) to be located on the western portion of the property near the CSX railroad tracks and a wooded area. T. 30-33, Exhibit 13(a), pp. 3-4). A copy of the revised site plan (Exhibit 32(a)), showing the location of the monopole, is set forth below:

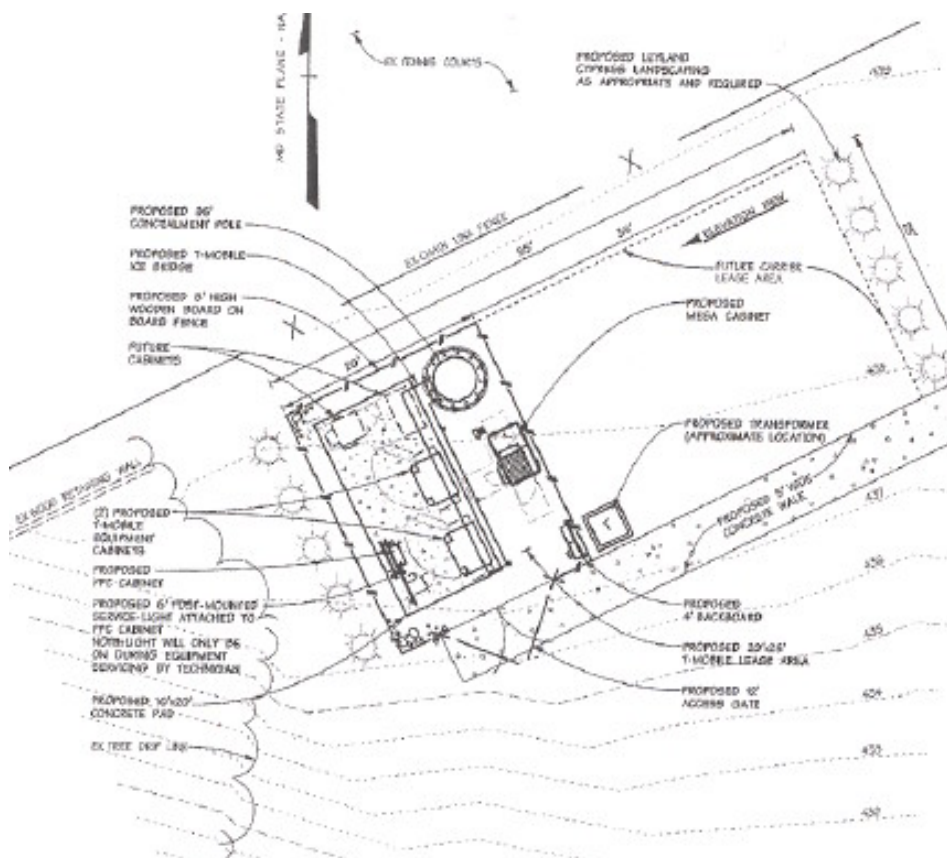


Technical Staff reports that the pole will be located approximately 609 feet from Great Seneca Highway, 624 feet from the eastern property line, approximately 677 feet from the southern property line and 75 feet from the western property line abutting the CSX tracks. T-Mobile is requesting 20-foot waiver of the setback requirements from the western property line (i.e., 1 foot for each 1 foot of the tower height) because it believes this will better screen the unipole from the surrounding area. T. 32-33. Section 2.58(a)(1)(D) of the Zoning Ordinance permits a setback if requested by the applicant and (1) the setback is no more than the building setback applicable in the applicable zone, and (2) “evidence indicates that a support structure can be located on the property in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, if any, and visibility from the street.” Technical Staff did not advise as to whether the structure met the minimum building setbacks from applicable zones, but did support the waiver request finding that:

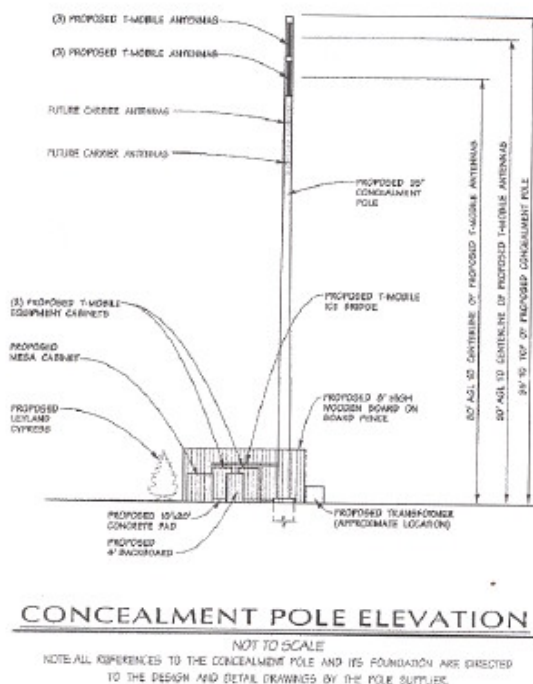
The proposed location takes into consideration the topography, existing vegetation, adjoining and nearby residential properties, and visibility from the street (609 feet from Great Seneca Highway). These site conditions make this location less visually obtrusive. There is a mature line of trees to screen the monopole from the adjoining properties. Additionally, at this location, the views of the facility are minimized from Great Seneca Highway and Grey Eagle Court. For these reasons, staff supports the setback reduction request. Exhibit 13(a), p. 10.

As originally proposed, the site plan showed a 25-foot by 30-foot compound sufficient to house T-Mobile’s equipment cabinets, but not those of other carriers. Exhibit 13(a), p. 3. Subsequent to the public hearing, the Petitioner amended its special exception request to expand the size of the compound to 25 feet by 55 feet. Exhibit 32(a). Petitioner also agreed to comply with Technical Staff’s recommendation that the compound be screened by an 8-foot high wooden board-on-board fence, rather than the chain link fence originally proposed. The compound area is shown on the revised site plan on the next page, along with the design of the slim line unipole. Exhibit 32(a).

The proposed monopole will not be lighted and will contain no signage except a sign no larger than 2 square feet affixed to the support structure or equipment shelter to identify the owner and maintenance service provider, as required by Zoning Ordinance §59-G-2.58(a)(8). In addition to the board-on-board fence, the equipment compound is to be located to the rear of the property. T-Mobile introduced a sealed letter (Ex. 18) from the engineering firm which constructs its towers stating that the fall radius of the pole would be 70 feet, thus avoiding any impact on the adjacent CSX property.



**Compound Area
Exhibit 32(a)**



T-Mobile proposes to use Ericsson radio base station (RBS) cabinets to shelter the electronics for the structure and backup batteries. Exhibit 23(a). According to a “Fact Sheet” submitted by T-Mobile, since 1999, T-Mobile has operated a network of 1,500 stations in the DC Metro area without a single failure or accident resulting in a chemical release. Exhibit 23(a). The EPA classifies NorthStar NSB 100-FT battery as spill proof. Exhibit No. 23 contains the specifications sheet for NorthStar batteries. T-Mobile submitted an affidavit from its Real Estate Manager for the Washington and Baltimore market that T-Mobile will apply to register the facility in compliance with the Montgomery County Executive regulations and that, if T-Mobile does not use NorthStar batteries, it will use batteries with equivalent or better specifications than described in the Fact Sheets. Exhibit 23.

Staff also noted that the proposed monopole will not have other adverse effects on the community (Exhibit 13(a), p. 7):

The use will be in harmony with the general character of the surrounding residential neighborhood. The proposed facility will be located, constructed, and operated in such a manner that it will not interfere with the orderly use,

development and improvement of surrounding property. The site is unmanned and will not generate additional traffic or parking needs. The stealth monopole will visually blend into the landscape and the only activity on the site will be occasional service visits to the site.

The FCC regulates radio frequency exposure issues on a Federal level, and local officials are prohibited from deciding, based on health concerns, that a facility is inappropriate, as long as it complies with FCC regulations. Section 704(B) of the Telecommunications Act of 1996, 47 USC §332(c)(7)(B)(iv), provides, *inter alia*, that

No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communications] Commission's regulations concerning such emissions.

Mr. Curtis Jews certified that the proposed facility conformed to all FCC standards and guidelines. Exhibit 30.

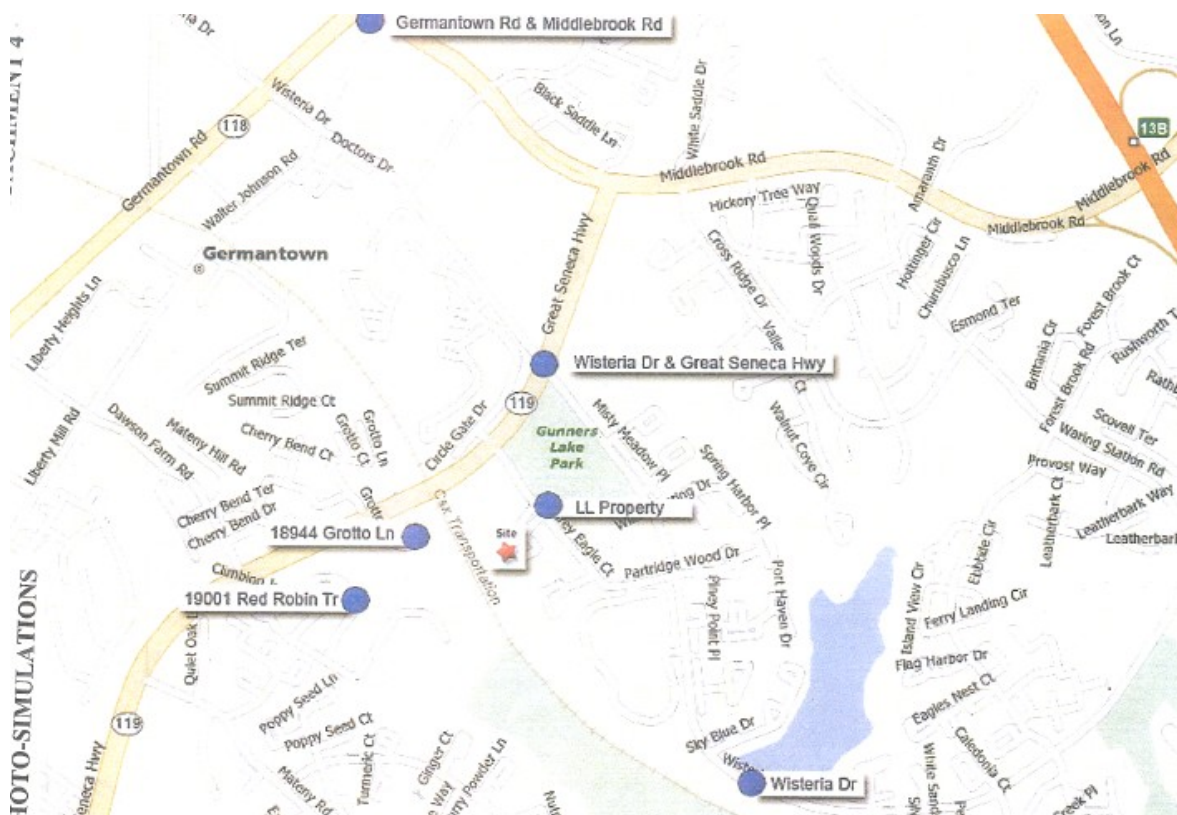
C. Impact of the Proposed Facility on the Neighborhood

The most significant issue regarding a telecommunications facility is its potential visual impact upon the surrounding area. In support of its application, T-Mobile performed “balloon tests” and submitted photographic simulations of the proposed tower from different locations surrounding the site. T. 42-44. A map identifying the locations from which the photographs were taken (included in the Technical Staff Report), is shown on the next page. While the locational map (Exhibit 10(a), Exhibit 13(a), Attachment 4) indicates that only six locations were tested, the photographs of the balloon tests and simulations show that an additional location at the entrance to the apartment complex on Grey Eagle Court was also tested. (Exhibits 10(m) and (n). According to Ms. Hillorie Morrison, who qualified as an expert in land planning, and project management relating to infrastructure development, particularly including site acquisition, zoning and planning, and the impacts of new facilities, testified that, of the six locations tested, the tower will be visible from four

of those locations. T. 42-44. The photographs indicate that the tower would be visible from the entrance to the apartments along Grey Eagle Court, but the compound would not be visible. The photographs showing the results of the balloon tests and the photographic simulations (Exhibits 10(a) through (o), Exhibit 13(a), Attachment 4) are shown beginning on the next page.

Technical Staff made the following comments regarding visibility of the proposed monopole (Exhibit 13(a), p. 11):

The proposed telecommunications facility is located at the rear portion of an existing apartment complex, approximately 609 feet from the road. Significant efforts have been made by the applicant to minimize the visual impact of the 95-foot tall structure. The new design of a disguised, stealth monopole that will have all the equipment concealed inside, as well as the large trees surrounding the property, minimizes its appearance. The base of the structure and equipment buildings will be screened by an 8-foot tall wooden fence and landscaping.



Locational Map (above)

Balloon Test

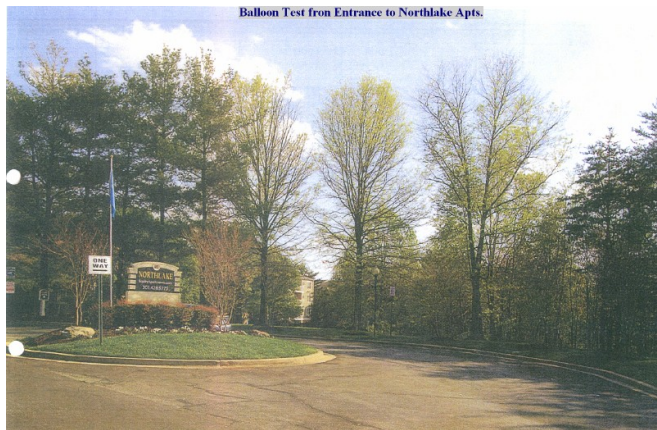


Photo Simulation



Balloon Tests



Photographic Simulations



D. The Master Plan

Petitioners' property is located in the area subject to the 1989 Germantown Approved and Adopted Germantown Master Plan. Exhibit 5(a); Exhibit 13(a), p. 2. Technical Staff advises that the Master Plan contains no site specific recommendations for the property. Staff found that the proposed use was consistent with the Master Plan (Exhibit 13(a), p. 7):

The property is located within the planning area covered by the 1989 Approved and Adopted Germantown Master Plan. The Master Plan does not specifically address this property, but observes that the residential density in the Planned Development Zones is relatively high, particularly along the CSX Railroad, where the greatest concentration of garden apartments in Germantown occurs.

Staff further pointed out that the Zoning Ordinance describes the Planned Development Zones as being in the nature of special exceptions, and are intended to produce a coordinated balance of residential and convenience commercial uses, as well as other commercial and industrial uses and related public and private facilities. Exhibit 13(a), p. 4. Staff found that the proposed location close to the CSX property and woodland, and the proposed stealth design, minimized the facility's impact on surrounding properties. T. 4. It also recommended that the compound be screened by a board-on-board wooden fence rather than a chain link fence, to which the Petitioners have agreed and have included in their revised site plan. (Exhibit 32(a), T. 26-27).

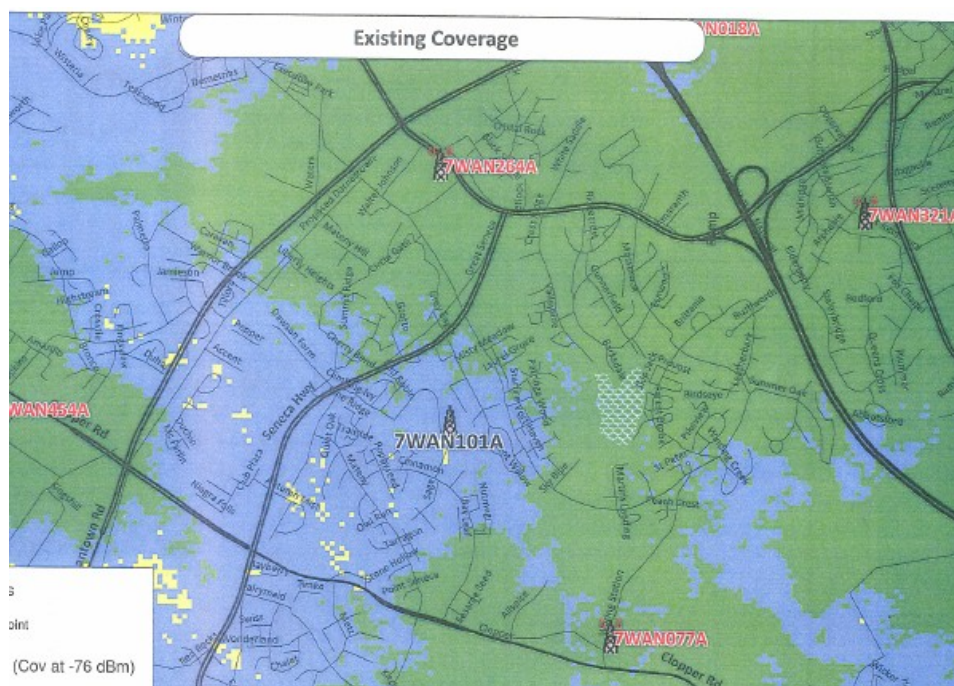
E. Need for the Proposed Facility

T-Mobile is proposing to locate a new telecommunications facility in order to fulfill its service requirements in this area. The Montgomery County Transmission Facility Coordinating Group (TCFG) initially reviewed the application in 2009 and recommended approval subject to 2 conditions: (1) that the applicant obtain approval of a special exception for the property, and (2) that it seek a waiver of the requirement that the facility be constructed to accommodate equipment for three carriers. Exhibit 7. Because T-Mobile had not applied for the special exception within one year of the Committee's original review, the TCFG reviewed the application again and found

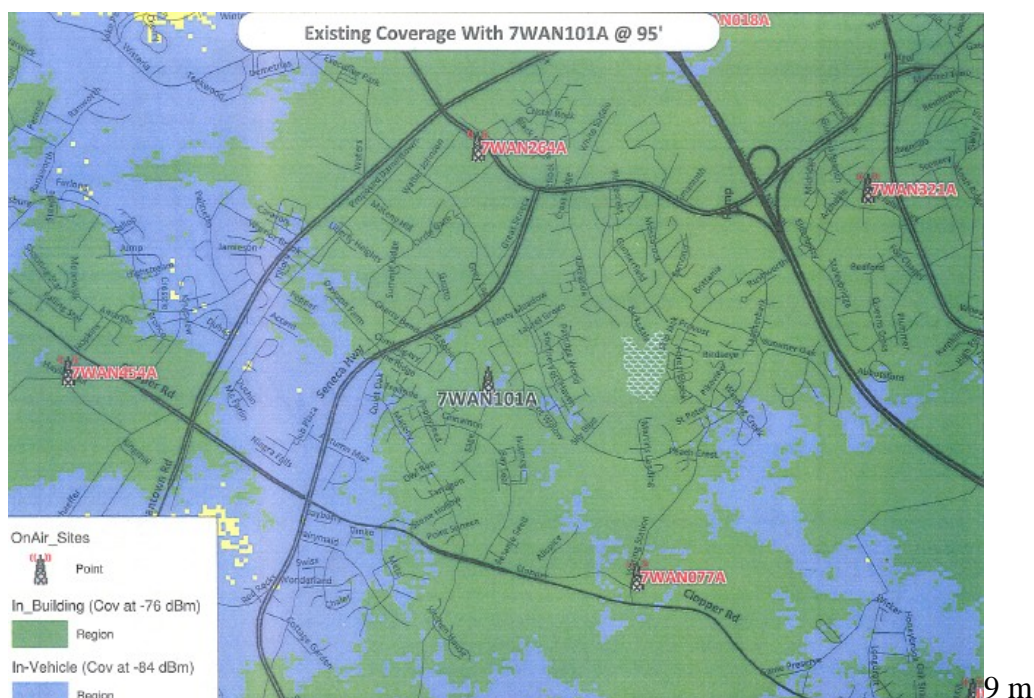
that nothing had occurred which would change its original recommendation. Exhibit 7. After the TCFG originally reviewed the application, T-Mobile had redesigned the facility to accommodate three carriers. While the recommendation in the TCFG's report remains unchanged, T-Mobile submitted minutes from the meeting at which the Committee recommended approval of the application. The minutes contain the following: "Gregory Rapisarda noted that because the plans now show space for future carriers' equipment, that condition is no longer necessary. Bob Hunnicutt [Tower Coordinator] agreed that it is no longer necessary." Exhibit 7.

Even though this petition has been recommended by both the Transmission Facilities Coordinating Group and the Technical Staff, the Board of Appeals, "must make a separate, independent finding as to need and location of the facility." Zoning Ordinance §59-G-2.58 (a)(12). Mr. Curtis Jews, the RF lead engineer for T-Mobile, testified as an expert in Radio Frequency (RF) Engineering. He testified that T-Mobile tries to address deficiencies in both coverage and capacity. T. 66. He testified that the area for which T-Mobile is seeking coverage is east of Great Seneca Highway and north of Clopper Road. T. 57. He described propagation maps which he prepared, included in the Technical Staff Report, showing T-Mobile's existing coverage without the proposed facility and projected coverage with the proposed facility (Exhibit 13(a), Attachment 5) shown on the next page.

Mr. Jews testified that areas shown in green receive in-building coverage, areas shown in blue receive in-vehicle coverage, and areas shown in yellow receive on-street coverage. T. 57-58. The maps depicting existing coverage shows that the area predominantly has only in-vehicle rather than in-building coverage. In addition, there are a number of very small areas showing only on-street coverage. T. 58. The map showing coverage with the proposed facility shows that the predominantly blue area is now green and there's a significant increase in in-building coverage. T. 59.



**Propagation Map Showing Existing Coverage
Exhibit A, Attachment 5**



**Propagation Map Showing Projected Coverage
Exhibit 13(a), Attachment 5**

Mr. Jews also testified that T-Mobile identifies areas in which a facility is needed by the

customer's experience, including the number of dropped calls and the ability to make 911 calls. T. 58. In his opinion, the lowest height of the tower which could achieve the coverage objectives is 95 feet. T. 60. He also submitted dropped call data (Exhibit 28) from other facilities in the vicinity of the subject property which showed that there were 66,840 dropped calls over the last year from the surrounding facility and there were 9,900 E911 calls from facilities surrounding the site. T. 64; Exhibit 28.

III. SUMMARY OF HEARING

At the hearing, Petitioners called three witnesses, Michael McGarity, the civil engineer who helped design the plans for the site; Ms. Hillorie Morrison, a T-Mobile project manager, and Curtis Jews, a radio frequency engineer.

1. Michael McGarity (T. 50-54):

Michael McGarity, a civil engineer and surveying consultant to T-Mobile qualified as an expert in civil engineering. He prepared the site plan accompanying the Petition. T. 51.

Mr. McGarity described the subject site and Petitioners' proposal. He testified that the unipole would be setback 609 feet from the northern property line, 624 feet from the eastern property line, 677 feet from the southern property line, and 75 feet to the western property line. T. 51. In his opinion, the Petition met all of the general and special standards for the grant of the special exception requested. T. 52. From an engineering standpoint, nothing on the site would prohibit the compound area to be expanded to accommodate three carriers. T. 52. Landscaping would actually be installed on the eastern side of the compound, and then future carriers would be responsible for modifying and enhancing the landscaping as necessary.

2. Hillorie Morrison (T. 23-48):

Hillorie Morrison works for Network Building and Consulting, and her firm acts as T-Mobile's agent for purposes of zoning. T. 25. She qualified as an expert in land planning and

infrastructure development, particularly site acquisition, zoning and planning, and the impacts of new facilities. T. 24. The plans show a chain link fence surrounding the compound, but T-Mobile is willing to comply with the condition in the Technical Staff Report and install a wooden board-on-board fence surrounding the compound. T. 26-27. T-Mobile's lease agreement requires the landlord to comply with local regulations in order that T-Mobile may obtain the necessary permits. T. 28.

T-Mobile's design for the tower calls for a unipole, slim design with interior antennas, which can be painted any color to blend in with the surroundings. T. 30. In her opinion, the Petition met all of the standards set forth in Section 59-G-1.21. As a non-manned facility, it doesn't create traffic or require parking and its operational impact is minimal because it requires only two site visits per month for maintenance and repair. T. 30. She also testified that the facility meets all the development standards in §59-G-2.58, with the exception of the setback from the western property line. T. 31. T-Mobile is requesting a 20-foot reduction in the setback because it is less visually obtrusive at that location. T. 32. The location proposed is in the rear of the property line adjacent to the CSX railroad tracks and has heavy vegetation. T. 32. The tower is also further from the existing buildings, and reduces the visibility from Great Seneca Road and Wisteria Road. She submitted a letter from the engineering firm that constructs T-Mobile's towers (Exhibit 18) stating that the tower is designed with a fall zone of 70 feet in order to prevent the pole from falling on the CSX property. She introduced an aerial photograph of the property showing the proximity of the tower to mature trees along the CSX border. T. 40. She also submitted photographs of the balloon tests and photo simulations of the proposed facility to demonstrate the visual impact of the property. T. 41-42. According to Ms. Morrison, the photographs show that the tower is visible from 4 of the 6 locations tested. T. 44.

Ms. Morrison submitted Exhibit 19, the FAA Notice Criteria. This is an online tool used to

determine whether notice of the proposed tower must be sent to the FAA. Based on the height of the pole and the ground elevation, the tower did not exceed the height over which notice to the FAA is required. T. 35. The height of the pole must exceed 200 feet in order for the FAA to require notice. T. T. 36.

According to Ms. Morrison, T-Mobile did attempt to collocate onto an existing facility prior to applying for this special exception. This pole will accommodate three carriers. Because the Tower Committee did not see the compound area for “future carriers”, the Tower Committee mistakenly thought that the facility accommodated fewer than three carriers. T. 39.

Exhibit 23, submitted by Ms. Morrison, is an affidavit from T-Mobile’s Real Estate Manager for the Baltimore/Washington area. In the affidavit, the manager attests that the facility will be registered in accordance with the “Montgomery County High Facility Registration”. She also submitted a description of the batteries and radio base cabinets that T-Mobile proposed to use for the facility. T. 45-46. Finally, she submitted a report prepared by a real estate consultant, Mr. Oakley Thorn, concluding that cell towers do not have an adverse impact on property values. T. 47-48. Mr. Thorn based his report on public records comparing sales of homes in the same subdivision with and without views of a tower. T. 48-49.

Ms. Morrison believes that the major inherent effect of a telecommunications facility is its visual impact. In her opinion, there is no non-inherent impact in this case because the location of the tower and the stealth design minimize the visual impact. T. 49.

3. Curtis Jews (Tr. 68-81):

Curtis Jews testified as an expert in Radio Frequency (RF) Engineering for T-Mobile. Mr. Jews is the RF lead engineer for T-Mobile. Mr. Jews testified the need (in terms of coverage and capacity) for the facility is demonstrated by customer complaints and the need to improve current cell phone coverage in the area. T-Mobile’s goal is to provide contiguous in-building coverage and

to provide sufficient capacity to avoid having customers experience dropped calls.

Mr. Jews also introduced two coverage maps. The first (Exhibit 27(a)), shows current on-air coverage around the site and the second, Exhibit 27(b), showing on-air coverage with the proposed site, 7 WAN101A, activated. Green is in-building coverage, which is the coverage that one can expect inside of the home. Blue is in-vehicle coverage, and the yellow is the on-street coverage.

The map of existing coverage shows that the target area receives predominantly in-vehicle coverage, with on-street coverage in several smaller locations. There is currently a lack of in-building coverage. Exhibit 27(b), showing the expected coverage with 7 WAN101A on air, there is an improvement in coverage. The area will receive predominantly in-building coverage, and the area with only on-street coverage is greatly reduced. Thus, the new facility would fill in the gap.

According to Mr. Jews, the sectors of the three existing facilities serving the target area experienced 66,840 dropped calls and 9,900 E911 calls over the last four months. The proposed facility will aid in reducing that number of dropped calls. T-Mobile commits to complying with FCC rules and its license regarding emissions in that they will be within the required FCC emissions.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioners have the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioners will have satisfied all the requirements to obtain the special exception, if they comply with the recommended conditions

(Exhibit 22).

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioners comply with the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a telecommunications facility. Characteristics of the proposed telecommunications facility that are consistent with the “necessarily associated” characteristics of telecommunications facilities will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with telecommunications facilities, or that are created by unusual site conditions, will be considered non-inherent effects. The

inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff noted that height and visual impact "tend to be inherent adverse effects commonly associated with telecommunications facilities...." Exhibit 13(a), p. 5. The Hearing Examiner would list the following inherent physical and operational characteristics necessarily associated with a telecommunications facility use:

- (1) antennas installed on or within a support structure with a significant height;
- (2) a technical equipment area that may or may not be enclosed within a fence;
- (3) visual impacts associated with the height of the support structure;
- (4) radio frequency emissions;
- (5) a very small number of vehicular trips per month for maintenance; and
- (6) some form of back-up power.

The inherent effects of a typical monopole telecommunications facility would generally have only a visual impact on the neighborhood, since it would be noiseless, unmanned and require only occasional servicing. With regard to visual impact on the surrounding area, Technical Staff found that the only impact was necessarily inherent because:

The proposed facility minimizes any such concerns given the design of the structure (stealth concealment pole) and that the 95-foot tall structure will be sited on the property approximately 609 feet from Great Seneca Highway and is surrounded by tall trees. Additionally, the stealth design (hidden antennas) will help ensure that the proposed structure will not interfere with views of the surrounding uses, including residential, in the area. The location of the proposed facility on the approximately 20-acre property relative to the surrounding area is such that it is sufficiently separated and screened from the surrounding properties to the north, east, and south. Exhibit 13(a), p. 6.

The Hearing Examiner agrees with Technical Staff that the visual impact of the proposed facility is only what is normally inherent in the construction of a telecommunication facility.

In addition to finding there were no non-inherent visual impacts, Technical Staff also concluded that there were no other unusual, negative characteristics of the site:

As noted, the proposed facility will be unmanned and therefore, there are no transportation impacts that would result from the proposed special exception.

There are no discernible noise-related impacts associated with the proposed use. The size, scale and scope of the proposed use are not likely to result in any traffic disruption, light intrusion or any other environmental impact. There are no non-inherent adverse effects sufficient to justify a denial of the special exception.

Having no evidence to the contrary, the Hearing Examiner agrees with Technical Staff's conclusion and finds that, considering size, scale, scope, light, noise, traffic and environment of the requested special exception, there are no non-inherent adverse effects from the proposed use which would require denial of the petition.

B. General Conditions

The general standards for a special exception are found in Zoning Code §59-G-1.21(a). The Technical Staff report, the approval of the Transmission Facilities Coordinating Group, the exhibits in this case and the testimony at the hearing provide ample evidence that the general standards would be satisfied in this case.

Sec. 59-G-1.21. General conditions.

§5-G-1.21(a) -*A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) Is a permissible special exception in the zone.

Conclusion: The site is zoned PD-9. Section 59-C-7.133(d) of the zoning ordinance provides that special exceptions permitted in the R-90 Zone may be permitted in a PD Zone provided the District Council finds that the use meets the standards set forth in §§59-C and 59-G of the Zoning Ordinance. The Board of Appeals may approve the special exception if it finds either that (1) the use is consistent with the design standards of the development plan and satisfies the requirements of §59-G, or (2) if the use is not inconsistent with the design standards of the development plan, and the approval is contingent on the District Council's approval of an amendment to the development plan that incorporates the special exception use.

Technical Staff advises that the original development plan covering the subject property did not include any design standards for the existing development. Nevertheless, Technical Staff concluded that it was compatible with the development plan because telecommunications facilities are a special exception use in the R-90 Zone, and therefore are permitted in the PD-9 Zone. Provided that the District Council approves an amendment to the development plan for the property, which is recommended as a condition of approval in this case, the Hearing Examiner agrees with Technical Staff and finds that there is sufficient evidence in the record that the use is permitted within the PD-9 Zone.

- (2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.58 for a telecommunications facility as outlined in Part C, below.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: Petitioners' property is located in the area subject to 1989 Germantown Master Plan. Technical Staff concluded that the facility is consistent with the Master Plan because it is permitted as a special exception in the PD-9 Zone, it is located adjacent to the CSX tracks in an area containing

the highest residential densities within Germantown, and because the stealth design, mature trees, and setbacks adequately screen the facility. The photographic simulations in the record support Technical Staff's finding that the location and design of the pole minimize its visual impact on the area. For these reasons, the Hearing Examiner finds that the planned use is not inconsistent with the goals and objectives of the 1989 Germantown Master Plan.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: Technical Staff found that the use would be in harmony with the general character of the neighborhood because its visual impact is minimized to blend with its surroundings and it has little or no other impacts on the area. The Hearing Examiner agrees with this assessment and, based on these facts and the other evidence of record, the Hearing Examiner concludes that the proposed use will be in harmony with the general character of the neighborhood.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff found the telecommunications facility will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood. The Hearing Examiner agrees for all the reasons stated immediately above and because the Petitioners introduced evidence that the fall radius of the facility will not affect the CSX property. Exhibit 18. Therefore, the Hearing Examiner finds that the telecommunications facility will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors,*

dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The tower will have no lights, and the equipment building will not be illuminated at night. Technical Staff found that the special exception would cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site. Exhibit 13(a), p. 8. Thus, the undisputed evidence supports the conclusion that the telecommunications facility will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity, and the Hearing Examiner so finds.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: Technical Staff reports that there are no other special exceptions in the area and concluded that the proposed use would not intensify the scope of other special exceptions in the area. Exhibit 13(a), p. 8. The proposed special exception use will not change the intensity of special exception uses in any substantial way. Having no evidence to the contrary, the Hearing Examiner agrees with Technical Staff and so finds.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. Moreover, the federal Telecommunications Act of 1996, 47 USC §332(c)(7)(B)(iv), provides that:

No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communications] Commission's regulations concerning such emissions.

Petitioners' radio frequency (RF) expert, Curtis Jews, testified that if this site is approved, T-Mobile commits to complying with FCC rules and its license regarding radio frequency emissions and submitted a certification to this effect. Tr. 69-71; Exhibit 30. Petitioners will also be required to comply with all applicable hazmat regulations governing the site as a condition of this special exception. The Hearing Examiner therefore concludes that the proposed telecommunications facility will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: The evidence supports the conclusion that the proposed special exception would be adequately served by the specified public services and facilities, to the extent they are needed for this type of use.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception:*
- (i) *does not require approval of a new preliminary plan of subdivision; and*
 - (ii) *the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact; then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the*

application was submitted.

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision. Exhibit 13(a), p. 9. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR). Technical Staff did do such a review, and concluded that the proposed use would add no additional trips during the peak-hour weekday periods and only one or two service trips per month. Exhibit 13(a), p. 9. Thus, the requirements of the LATR and PAMR are satisfied without a traffic study. By its nature, the site requires no school, water or sewer services. Technical Staff concluded, as does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards. Exhibit 13(a), p. 9.

(C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Technical Staff found that access to the facility is safe because it is from an existing driveway and the facility would generate only one to two vehicle trips (for maintenance) per month. Based on the record in this case, the Hearing Examiner agrees and Technical Staff and so finds.

C. Specific Standards

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 13(a)) and the conclusion of the Transmission Facilities Coordinating Group (Exhibit 7), provide sufficient evidence that the specific standards required by Section 59-G-2.58 are satisfied in this case, as described below.

Sec. 59-G-2.58. Telecommunication facility

(a) Any telecommunication facility must satisfy the following standards:

(1) A support structure must be set back from the property line as follows:

A. In agricultural and residential zones, a distance of one foot from the property line for every foot of height of the support structure.

B. In commercial and industrial zones, a distance of one-half foot from property line for every foot of height of the support structure from a property line separating the subject site from commercial or industrial zoned properties, and one foot for every foot of height of the support structure from residential or agricultural zoned properties.

C. The setback from a property line is measured from the base of the support structure to the perimeter property line.

D. The Board of Appeals may reduce the setback requirement to not less than the building setback of the applicable zone if the applicant requests a reduction and evidence indicates that a support structure can be located on the property in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, if any, and visibility from the street.

Conclusion: Zoning Ordinance §59-G-2.58(a)(1)(A) requires, in a residential or agricultural zone, that the cell tower be set back a distance of one foot from the property line for every foot of height of the support structure. Thus, the 95-foot high proposed unipole would require a 95-foot setback from surrounding property lines. This setback is met on three sides: it is 609 feet from the northern property line; 677 feet from the southern property line; and 624 feet from the eastern property line. The 75-foot setback adjacent to the CSX property (the western property line) does not meet the minimum 95-foot setback. T. 51.

The Applicants are seeking a reduction of the setback requirements, pursuant to Section 59-G-2.58(a)(1)(D), to allow the cell tower to be erected 75 feet from the western property line. The Board of Appeals is authorized by Zoning Ordinance §59-G-2.58(a)(1)(D) to reduce the setback requirement if the reduction is (1) not less than the building setback of the applicable zone, (2) if the applicant requests a reduction; and (3) “evidence indicates that a support structure can be located on the property in a less visually obtrusive location after considering the height of the structure,

topography, existing vegetation, adjoining and nearby residential properties, if any, and visibility from the street.”

Petitioners’ civil engineer testified that “he believed” the 75-foot setback meets the requirements of the PD-9 Zone (T. 52). The Hearing Examiner notes, however, that there are minimum building setbacks in the PD-9 Zone as follows:

b) In order to assist in accomplishing compatibility for sites that are not within, or in close proximity to a central business district or transit station development area, the following requirements apply where a planned development zone adjoins land for which the area master plan recommends a one-family detached zone:

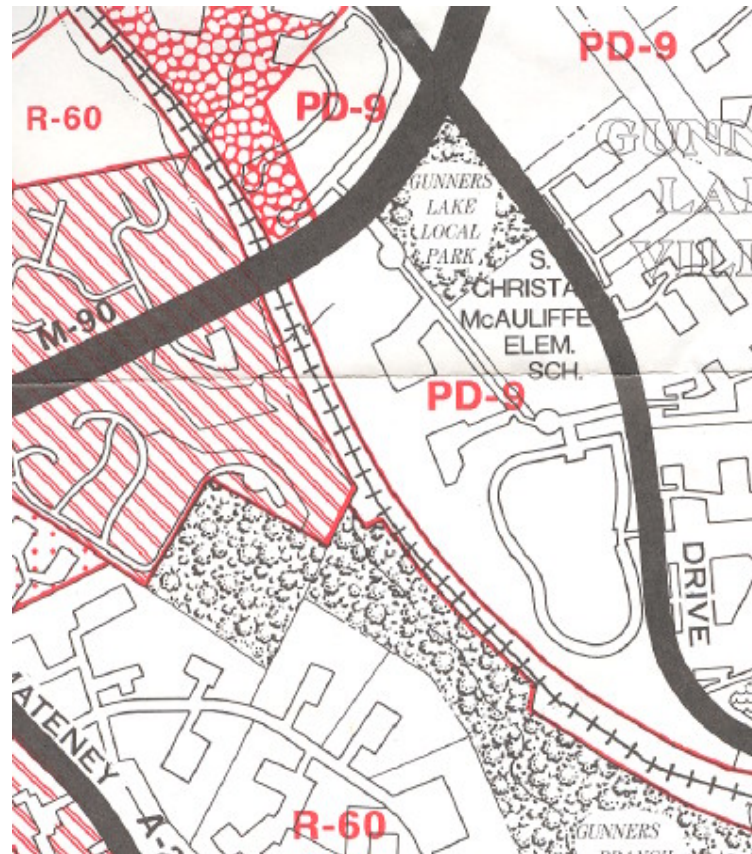
(1) No building other than a one-family detached residence can be constructed within 100 feet of such adjoining land; and

(2) No building can be constructed to a height greater than its distance from such adjoining land.¹

The key factor in determining the setback becomes the Master Plan recommended zoning for adjacent properties, shown on the Land Use and Highway Plan from the 1989 Master Plan (Exhibit 5(a), shown on the next page. Under Section 59-A-1.74 of the Zoning Ordinance, railroad rights of way adjacent to residential zones are classified in “the least intense of adjacent zones.”

To the east of the CSX railroad tracks, the subject property is bordered primarily by land in the PD-9 Zone with a small portion of R-H zoning to the north. It is bordered by the CSX railroad right of way along the western property line. On the western side of the railroad tracks, there are two zones adjacent to the subject property. The bulk of the property adjoining the right of way to the west of the tracks, including the land directly across from the proposed facility, is zoned R-T 12.5. There is a smaller amount of property west of the tracks adjoining the southern boundary of the property which is zoned R-60.

¹ This question relates only to the special exception standard set forth in Section 59-G-2.58. It is a slightly different issue than that addressed in the development plan amendment, which applies to building setbacks.



While the Zoning Ordinance could be interpreted narrowly to mean that the portion of the railroad right of way immediately adjacent to the proposed facility should be classified in the R-60 zone, the Hearing Examiner finds that, under the circumstances in this case, a better reading is to classify the right of way in the zone most directly confronting, and impacted by, the use.² Given that the property directly to the west of the railroad right of way is zoned R-T 12.5, the Hearing Examiner finds that the setbacks contained in the PD-9 Zone do not apply to this Petition.

As to minimizing the visual impact of the facility, Technical Staff supports the setback reduction because “the proposed location takes into consideration the topography, existing vegetation, adjoining and nearby residential properties, and visibility from the street...[which] make this location less visibly obtrusive.” Exhibit 13(a), p. 10. Staff noted a mature line of trees at the

² These provisions of the Zoning Ordinance were clearly designed to protect adjoining single-family detached homes and not railroad rights of way, especially given the size of this property and the location of the nearest single-family home.

proposed location screen the monopole from adjoining properties and the location minimizes views from Great Seneca Highway and Grey Eagle Court.

Based on this record, the Hearing Examiner recommends that the Board of Appeals grant the requested reduction in the eastern setback to 75 feet.

(2) *A support structure must be set back from any off-site dwelling as*

follows:

- A. *In agricultural and residential zones, a distance of 300 feet.*
- B. *In all other zones, one foot for every foot in height.*
- C. *The setback is measured from the base of the support structure to the base of the nearest off-site dwelling.*
- D. *The Board of Appeals may reduce the setback requirement in the agricultural an[sic] residential zones to a distance of one foot from an off-site residential building for every foot of height of the support structure if the applicant requests a reduction and evidence indicates that a support structure can be located in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, and visibility from the street.*

Conclusion: The subject site is in a residential zone, so the 300-foot setback requirement applies to this Petition. As shown in the revised Site Plan (Exhibit 32(a)), setbacks from three of the property lines are over 600 feet. The setback to the western property line (CSX) is 75 feet; however, the aerial photographs show that CSX railroad tracks lie between the subject property and the closest off-site dwelling shown on the special exception site plan. Scaling this distance on the site plan indicates that the dwellings shown are approximately 500 feet from the facility. Both T-Mobile and Technical Staff advise that the facility is more than 300 feet from the closest off-site dwelling. (Exhibits 3, p.7, 13(a), p. 10).³ Based on this evidence, the Hearing Examiner finds that this setback requirement has been met.

(3) *The support structure and antenna must not exceed 155 feet in*

³ While the proposed facility is 100 feet from the closest *on-site* dwelling, §59-G-2.58(a)(2) of the Zoning Ordinance mandates a setback only from property lines and *off-site* dwellings. Technical Staff found that this requirement is “[not applicable, the proposed facility meets the off-site dwelling setbacks.]”

height, unless it can be demonstrated that additional height up to 199 feet is needed for service, collocation, or public safety communication purposes. At the completion of construction, before the support structure may be used to transmit any signal, and before the final inspection, pursuant to the building permit, the applicant must certify to the Department of Permitting Services that the height and location of the support structure is in conformance with the height and location of the support structure, as authorized in the building permit.

Conclusion: The concealment pole will be 95 feet in height with antennas located inside the pole.

Thus, the proposed facility meets this requirement.

(4) The support structure must be sited to minimize its visual impact. The Board may require the support structure to be less visually obtrusive by use of screening, coloring, stealth design, or other visual mitigation options, after considering the height of the structure, topography, existing vegetation and environmental features, and adjoining and nearby residential properties. The support structure and any related equipment buildings or cabinets must be surrounded by landscaping or other screening options that provide a screen of at least 6 feet in height.

Conclusion: As discussed previously, the proposal conforms to this requirement. In addition to the nearby mature trees and the CSX property, the compound will be surrounded by an 8 foot tall, board-on-board fence.

(5) The property owner must be an applicant for the special exception for each support structure. A modification of a telecommunications facility special exception is not required for a change to any use within the special exception area not directly related to the special exception grant. A support structure must be constructed to hold no less than 3 telecommunications carriers. The Board may approve a support structure holding less than 3 telecommunications carriers if:

(A) requested by the applicant and a determination is made that collocation at the site is not essential to the public interest; and

(B) the Board decides that construction of a lower support structure with fewer telecommunications carriers will promote community compatibility. The equipment compound must have sufficient area to accommodate equipment sheds or cabinets associated with the telecommunications facility for all the carriers.

Conclusion: The property owner, ERP Operating Limited Partnership, is a Co-Petitioner. The

facility will be capable of supporting three telecommunications carriers. Exhibit 32(a).

(6) *No signs or illumination are permitted on the antennas or support structure unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.*

Conclusion: No signs or illumination are proposed, except the two square foot sign required by subsection (8), below.

(7) *Every freestanding support structure must be removed at the cost of the owner of the telecommunications facility when the telecommunications facility is no longer in use by any telecommunications carrier for more than 12 months.*

Conclusion: Petitioners have agreed to comply with this standard (Exhibit 3, p. 9) and a condition to that effect is recommended in Part V of this report.

(8) *All support structures must be identified by a sign no larger than 2 square feet affixed to the support structure or any equipment building. The sign must identify the owner and the maintenance service provider of the support structure or any attached antenna and provide the telephone number of a person to contact regarding the structure. The sign must be updated and the Board of Appeals notified within 10 days of any change in ownership.*

Conclusion: The required sign will be installed (Exhibit 3, p. 10), and a condition so stating is recommended in Part V of this report.

(9) *Outdoor storage of equipment or other items is prohibited.*

Conclusion: No outdoor storage of equipment is proposed. Equipment will be enclosed as described elsewhere in this report.

(10) *Each owner of the telecommunications facility is responsible for maintaining the telecommunications facility, in a safe condition.*

Conclusion: Petitioner states that it will maintain the facility in a safe condition (Exhibit 3, p. 10), and a condition requiring this as part of the approval of this special exception is included in Section V of this Report.

(11) The applicants for the special exception must file with the Board of Appeals a recommendation from the Transmission Facility Coordinating Group regarding the telecommunications facility. The recommendation must be no more than 90 days old, except that a recommendation issued within one year before June 22, 2010, must be accepted for one year from the date of issuance. The recommendation of the Transmission Facility Coordinating Group must be submitted to the Board at least 5 days before the date set for the public hearing.

Conclusion: A recommendation of approval, dated February 2, 2011, was filed herein as Exhibit 7, which is less than 90 days old when the Petition was filed on May 3, 2011.

(12) The Board must make a separate, independent finding as to need and location of the facility. The applicant must submit evidence sufficient to demonstrate the need for the proposed facility.

Conclusion: As noted, both the Transmission Facility Coordinating Group and the Technical Staff recommended approval. T-Mobile's lead RF engineer also presented evidence in the form of coverage maps and call data to support the need for the facility. The Hearing Examiner recommends that the Board make the finding that there is a need for the proposed telecommunications facility and that it will be appropriately located, based on the evidence set forth in Part II of this report.

(b) Any telecommunications facility special exception application for which a public hearing was held before November 18, 2002 must be decided based on the standards in effect when the application was filed.

Conclusion: Not applicable.

(c) Any telecommunications facility constructed as of November 18, 2002 may continue as a conforming use.

Conclusion: Not applicable.

D. Additional Applicable Standards

Section 59-G-1.23. General development standards.

(a) Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.

Conclusion: Zoning Ordinance §59-G-2.58 specifies the development standards for telecommunications facilities. As discussed above, the proposed use meets those standards.

(b) Parking requirements. Special exceptions are subject to all relevant requirements of Article 59-E.

Conclusion: Technical Staff did not recommend any parking for the proposed facility because it will require only one or two service visits per month.

(c) Minimum frontage. In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:

* * *

(5) Public utility buildings and public utility structures, including radio and T.V. broadcasting stations and telecommunication facilities.

Conclusion: No waiver is needed because the subject site is located on a property already developed with garden apartments with adequate frontage. In any event, the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of Section 59-G-1.21.

(d) Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.

Conclusion: According Technical Staff, the property is exempt from submitting a forest conservation plan (Exhibit 13(a), p. 5).

(e) Water quality plan. If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan,

the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.

Conclusion: This section pertains only to sites in special protection areas, where water quality plans are required. Staff has not indicated that the site is within an SPA.

(f) Signs. The display of a sign must comply with Article 59-F.

Conclusion: As indicated earlier in this report, the only sign on the facility will be the two square foot sign required by the special exception.

(g) Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.

Conclusion: For the same reasons supporting the findings relating to compatibility with the Master Plan and the waiver of the setback requirements (above), the Hearing Examiner finds that this requirement has been met.

(h) Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

(1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.

(2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

Conclusion: The stealth monopole will not be lit, therefore, this requirement is not applicable.

Based on the testimony and evidence of record, I conclude that the telecommunications

facility use proposed by Petitioners, as conditioned below, meets the specific and general requirements for the special exception, and that the Petition should be granted, subject to the conditions set forth in Part V of this report.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that Petition No. S-2809 for a special exception to construct and operate a telecommunications facility, including a 95-foot tall concealment pole and related equipment, at 14001 Grey Eagle Court, Germantown, Maryland, be GRANTED, and pursuant to Section 59-G-2.58(a)(1)(D), that the Board of Appeals should grant Applicants' request to reduce the required setback from the western property line (adjacent to property owned by CSX) from 95 feet to 75 feet, all with the following conditions:

1. The Petitioners shall be bound by all of the exhibits of record, and by the testimony of their witnesses and the representations of counsel identified in this report.
2. Approval by the District Council of an amendment to the development plan for the subject property to accommodate the use in accordance with this special exception petition.
3. Approval by the Planning Board of a site plan (in accordance with §59-D-3 of the Zoning Ordinance).
4. At the completion of construction, before the support structure may be used to transmit any signal, and before the final inspection pursuant to the building permit, the Petitioners must certify to the Department of Permitting Services that the height and location of the support structure is in conformance with the height and location of the support structure as authorized in the building permit.
5. The telecommunication facility must display a contact information sign, no larger than two square feet, affixed to the outside of the equipment enclosure. This sign must identify the owner and the maintenance service provider and provide the telephone number of a person to contact regarding the installation. The sign must be updated and the Board of Appeals notified within 10 days of any change in ownership.
6. There must be no antenna lights or stroboscopic lights unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.

7. There must be no outdoor storage of equipment, except equipment specified in the Site Plan.
8. Each owner of the telecommunications facility is responsible for maintaining the facility in a safe condition.
9. The facility shall be available for collocation of up to three carriers.
10. The telecommunications facility must be removed at the cost of the owner of the telecommunications facility when the facility is no longer in use by any telecommunications carrier for more than 12 months.
11. Petitioners must obtain a Hazmat Use Permit for the subject site before commencing operations.
12. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and the entire premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: September 2, 2011

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized 'L' and 'R' followed by a long horizontal flourish.

Lynn A. Robeson
Hearing Examiner